

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

WEATHERVANE SEAFOODS INC.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 I unpaid bonus

Date of Hearing: June 9, 2015

Case No. 50205

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 6, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on May 19, 2015.

The claimant testified that she worked for the employer for about twelve years and was a manager for eight of those years. The claimant further testified that she was a salaried employee and that there was a bonus system in place for management personnel.

The claimant testified that the year was divided into four quarters for the bonus process. The amount of the bonus was arrived at through a series of checkpoints dealing with the restaurant where the employee worked. The claimant said that she was the manager in the Bedford, New Hampshire restaurant. She was the manager there for the fourth quarter of 2014. The location closed soon after the quarter and she became an assistant manager in the Nashua, New Hampshire restaurant. The claimant left employment in March of 2015 but she is not seeking any bonus for that period of time because she was not an employee at the end of that first quarter in 2015.

The claimant did testify that there were staggered payments of the bonus over that last few quarters but she believes the bonus is due right after the quarter ends and the financial checkpoints are reached. She believes that she is due approximately \$1,800.00 for the last quarter in 2014.

The employer testified that the quarters were set in time frames. However, there was no practice of having to pay the bonus in the month following the reporting quarter. The bonus was

established as an incentive for managers to produce. There is no guaranteed bonus amount because targets have to be met and goals reached. The employer also testified that the last quarter of the year takes the longest time to do an evaluation because it is also the close out for the year for the whole restaurant chain.

The employer testified that as of the end of March of 2015 the bonus for quarter four of 2014 had not been calculated. In fact as of the date of the hearing the bonus had still not been set for the quarter in question. The employer presented a chart that shows in the last nine quarters, four quarters took two plus months to establish the amount. Five quarters took between four and six months to calculate. The employer did this to demonstrate that there is no written obligation to pay in the month following the quarter.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing. This section also places an issue such as a bonus payment into the category of wages when the bonus is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The claimant is correct that the reporting time for the bonus payment is a three month period. If there is cause for the bonus to be paid it has been paid but the records show that it is not always paid the month after the reporting quarter.

The employer was credible that the payment is always made after a review of the records and if those records show a bonus is warranted. There is however no time frames on the payout. The employer relies on their policy that in order to receive the bonus you have to be an employee. In this case the claimant was not an employee when the bonus was paid, if there was a payment. The bonus is a prerogative of the employer and is wages when paid but not before it is paid.

The Wage Claim is invalid.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: June 30, 2015

TFH/kdc